

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOSEPH ESCALADA**  
Claimant

VS.

**KICE INDUSTRIES, INC.**  
Respondent

AND

**TRANSPORTATION INSURANCE COMPANY**  
Insurance Carrier

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Docket No. 220,302

## ORDER

Claimant appeals from an Award entered by Administrative Law Judge Nelsonna Potts Barnes on March 16, 1999. The Appeals Board heard oral argument September 10, 1999.

## APPEARANCES

Robert R. Lee of Wichita, Kansas, appeared on behalf of claimant. D. Steven Marsh of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

## RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

## ISSUES

The Award grants benefits for a 5 percent whole body disability. The disability is based on the functional impairment rating by Dr. Philip R. Mills. On appeal, claimant contends the disability should be based on the rating by Dr. Pedro A. Murati, a rating of 23 percent.

Respondent raises additional issues. In addition to the nature and extent of disability, respondent contends claimant failed to prove that he met with personal injury by

accident, failed to prove that the accident arose out of and in the course of employment, and failed to prove that he gave timely notice as required by K.S.A. 44-520.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in her Award. We agree that the evidence proves claimant suffered accidental injury arising out of and in the course of his employment with respondent and that he gave timely notice. While we agree that Dr. Bernard F. Hearon's 0 percent rating is not credible, the rating by Dr. Mills, 5 percent, is more consistent with the claimant's complaints at the regular hearing than the 23 percent rating by Dr. Murati. Work disability is not an issue. The Board affirms the finding of 5 percent disability.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on March 16, 1999, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
D. Steven Marsh, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director